

**REMARKS/ARGUMENTS:**

The non-final Office Action dated July 28, 2006, rejected all claims then pending. In view of the extended prosecution of this application and a teleconference with the Examiner, all claims are canceled herein and new claims 41-60 are added. Support for the added claims is most particularly found at page 22 line 28 to page 23 line 23 of the application. No new matter is added.

**Interview Summary:**

The undersigned initiated a teleconference with the Examiner held on 7 September 2006. The undersigned noted that references to Lo and Falzon were previously asserted by another Examiner and overcome, and also a frustration with the extended examination of this application (multiple non-final and final office actions). The Examiner indicated the claim language makes it difficult to search the claimed subject matter to his satisfaction, and was therefore hesitant to pass the claims to issue or suggest how they might be amended to that end. The undersigned indicated he would attempt to submit claims directed to another aspect of the invention to break the impasse. The undersigned does not contest the Examiner's Interview Summary dated September 12, 2006.

The Assignee of this application has agreed to cancel the previously submitted claims without prejudice or disclaimer. New claims 41-60 are submitted herein, directed to selecting a signal constellation from a plurality of signal constellations so as to encode a characteristic of channel fading into symbol amplitude. Whereas these new claims differ substantially from those canceled, they are submitted in respectful view of the Examiner's concerns noted in the interview summary above. The undersigned therefore requests that if relevant art is found, the Examiner issue a non-final office action so the Applicants have an opportunity to meaningfully respond.

Examination of the newly submitted claims is earnestly requested.

Respectfully submitted:

  
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October 30, 2006  
Date

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

October 30, 2006  
Date

Ann Oleniuk  
Name of Person Making Deposit